

Daniel Chase files this constitutional challenge for 1:20-cv-00287-JAW

The State has a legal duty to ensure my security of person which must be upheld by state employees able to perform that duty as a right of citizenship. The State has a duty to uphold. That duty exists as a right of citizenship. The right of protection is declared in the Declaration of Independence and is found in Blackstone's commentaries as equal payment for allegiance. The states duty to ensure the security of person for each state citizen as payment for their allegiance or under police power is declared through Supreme Court precedent. Only police officers have the physical presence, training, and legal authority needed to fulfill this highest state duty. No other part of a state government has the ability to protect the states citizens. The legislative and judicial branches are only intended to put ink on paper while creating laws, or making legal decisions. By default the states duty to ensure the security of person of each citizen must go to police officers. If police do not ensure the security of person and protect the citizens pecuniary rights then citizenship has become a farce. Police power is found within sovereignty as sovereignty can not exist without having police power. The Courts have declared sovereignty resides within the 11th amendment. The rights of citizenship reside within the 9th and 10th amendments. Due process claims in Deschaney and Castle Rock do not apply to this challenge.

U.S. DISTRICT COURT
DISTRICT OF MAINE
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Is the Constitution supposed to be applied exactly as it is written? The Supreme Court said yes thereby declaring original intent that requires an honest literal interpretation be applied forever to avoid fraud.

As men, whose intentions require no concealment, generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our **constitution**, and **the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said.** **Gibbons v. Ogden, 22 US 1 - Supreme Court 1824**

Does the government have a duty to protect its citizens when possible and as much as possible? What source might force a government have a legal duty to protect each citizen?

The government, when so formed, may, and **when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction**; but it can exercise no other. The duty of a government to afford protection is limited always by the power it possesses for that purpose.

The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these "unalienable rights with which they were endowed by their Creator."

As was said by Mr. Justice Johnson, in *Bank of Columbia v. Okely*, 4 Wheat. 244, it secures "the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." **United States v. Cruikshank, 92 US 542 - Supreme Court 1876**

Do we have the right to protection from the state? It all depends on how the question is asked. Based on the due process clause the states law enforcement officers have no duty to protect citizens. No other state employees can protect the people lives when the people need the states protection to avoid death or injury from a criminal attacker. Only law enforcement can prevent government employed thieves and non-government thieves from violating the citizens pecuniary rights including bodily integrity.

It is true that in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals.

But the claim here is based on the Due Process Clause of the Fourteenth Amendment, which, as we have said many times, does not transform every tort committed by a state actor into a constitutional violation. **DeShaney v. Winnebago County Dept. of Social Servs., 489 US 189 - Supreme Court 1989** (and)

The procedural component of the Due Process Clause does not protect everything that might be described as a "benefit": "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire" and "more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Board of Regents of State Colleges v. Roth, 408 U. S. 564, 577 (1972). Such entitlements are, "of course, . . . not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law."

We conclude, therefore, that respondent **did not, for purposes of the Due Process Clause**, have a property interest in police enforcement of the restraining order against her husband. **Castle Rock v. Gonzales, 545 US 748 - Supreme Court 2005**

Is there a different part of the Constitution, common law, or understanding of the simple laity that requires the state to protect people through its executive branch? I say yes. The state has a duty to protect its citizens. This duty is not limited to protecting their rights in Court it also extends to ensuring our bodies remain unharmed.

Prior tempore, potior jure. Earlier in time, stronger in right.

Citizenship brings with it the duty of the government to protect its citizens. If the government refuses to protect its citizens the state surrenders its authority. Once the government surrenders its authority it can not enforce any of its laws as allegiance and obedience are removed. Only police officers are capable of performing the state function of protecting the state citizens and preserving their lives. By default the duty to protect the citizens from physical harm falls on police officers under police power. The right to receive protection from the state to ensure the security of person of each citizen is a right of citizenship.

It is the duty of the State to protect its own citizens, within its own borders. This is the natural compensation for allegiance. **This high duty extends to all the pecuniary rights of the citizens, as well as to the rights of security of person.** . . . No obligation of comity is paramount to this duty. Without a constant and effective exertion of it, citizenship would become a farce. **Haddock v. Haddock, 201 US 562 - Supreme Court 1906**

We are of opinion, however, that provision for a hearing before seizure and condemnation and destruction of food which is unwholesome and unfit for use, is not necessary. The right to so seize is based upon **the right and duty of the State to protect and guard, as far as possible, the lives and health of its inhabitants** **North American Cold Storage Co. v. Chicago, 211 US 306 - Supreme Court 1908**

The right and duty of the State to protect and guard, as far as possible, the lives and health of its inhabitants **includes** the duty of law enforcement to ensure the security of person of each citizen. To deny this requirement is to deny the state protects and guards the lives and health of its citizens which frees all citizens from the states authority.

In the case of Billingsley v. Billingsley, 285 Ala. 239, 231 So.2d 111, Mr. Justice Harwood, speaking for the Court, states:

"It is the duty of the State to protect its own citizens, within its own borders. This is the natural compensation for allegiance. This high duty extends to all the pecuniary rights of the citizens, as well as to the rights of security of person.—Foster's Cr.Cas. p. 188; Story, J., in U.S. v. Rice, 4 Wheat. 246, 254, (4 L.Ed. 562). No obligation of comity is paramount to this duty. Without a constant and effective exertion of it, citizenship would become a farce.—Reid v. U.S., 3 Quart. Law Journ. p. 122; S.C. 4 Div. C.C. 21; U.S. v. More, 3 Cranch [159] 160, (2 L.Ed. 397), note." **Ex parte Buck**, 287 So. 2d 441 - Ala: Supreme Court 1973

Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other. **Luria v. United States**, 231 US 9 - Supreme Court 1913

If I am not protected by the only part of the state capable of protecting me --its executive branch-- (police officers) I can have no duty of allegiance or obedience to the state. Luria says I have that right or the state has no authority over me. This gets intriguing once you apply the common law of England.

From the nature of the case, no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim to obedience. **United States v. Rice**, 17 US 246 - Supreme Court 1819 [*A city was taken over by the British so U.S. laws did not apply. Without the USA's protection no duty of allegiance or obedience or taxes existed.*]

The policy of imposing liability upon a civil subdivision of government exercising delegated police power is familiar to every student of the common law. We find it recognized in the beginning of the police system of Anglo-Saxon people. Thus, "**The Hundred, a very early form of civil subdivision, was held answerable for robberies committed within the division.**" By a series of statutes, beginning possibly in 1285, in the statutes of Winchester, 13 Edw. I, c. 1, coming on down to the 27th Elizabeth, c. 13, the Riot Act of George I (1 Geo. I, St. 2) and Act of 8 George II, c. 16, **we may find a continuous recognition of the principle that a civil subdivision entrusted with the duty of protecting property in its midst and with police power to discharge the function, may be made answerable not only for negligence affirmatively shown, but absolutely as not having afforded a protection adequate to the obligation.** Statutes of a similar character have been enacted by several of the States and held valid exertions of the police power. Darlington v. Mayor &c. of New York, 31 N.Y. 164; Fauvia v. New Orleans, 20 La. Ann. 410; County of Allegheny v. Gibson &c., 90 Pa. St. 397. **The imposition of absolute liability upon the community** when property is destroyed through the violence of a mob **is not, therefore, an unusual police regulation.** **Chicago v. Sturges**, 222 US 313 - Supreme Court 1911

All of a sudden it becomes clear. The state has a duty to protect its people based NOT on the due process clause but instead on the duties imposed by police power itself. The people insisted on individual protection against harm as a binding obligation placed upon the state by the true sovereigns, the people as an undeniable condition of citizenship. Being a citizen guarantees state protection. The binding duty, the obligation, of the State to protect its citizens from physical harm can not be denied, altered, or repudiated. The people attached this obligation to the States at the beginning.

[T]he right to make binding obligations is a competence attaching to sovereignty. In the United States, sovereignty resides in the people. [T]he Government is not at liberty to alter or repudiate its obligations **Perry v. United States, 294 US 330 - Supreme Court 1935**

The **police power** is an attribute of sovereignty and is **founded on the duty of the state to protect its citizens** and provide for the safety, good order, and well-being of society. It is coextensive with the right of self-preservation in the individual. **California-Oregon Power Co. v. BEAVER PORTLAND C. CO., 73 F. 2d 555 - Circuit Court of Appeals, 9th Circuit 1934**

[W]e affirm the decree of the court below, passing without consideration the second question discussed by that court and upon which its decision rested, as to which we express no opinion. **California Oregon Power Co. v. Beaver Portland Cement Co., 295 US 142 - Supreme Court 1935 [appealed]**

"The state has no more important interest than the maintenance of law and order. * * * It is as much **the duty of the state to protect property** from destruction by mob violence and to preserve the liberty of the citizen to use his property lawfully as it is to protect the same property from theft or arson. No official intrusted with the enforcement of the law can select the laws which he will enforce or the citizens that he will protect. **He has sworn to enforce all laws and to protect all citizens, and there is no escape for him from the paramount authority of the Federal Constitution.**' Sterling et al. v. Constantin et al., supra, 287 U.S. 378, at page 398, 53 S.Ct. 190, 195, 77 L.Ed. 375 **Wilson & Co. v. Freeman, 179 F. Supp. 520 - Dist. Court, Minnesota 1959**

Was this act void, as a law of Maryland? If it was, it must have become so, under the restrictions of the constitution of the state, or of the United States. **What was the object of those restrictions? It could not have been to protect the citizen from his own acts**, for it would then have operated as a restraint upon his rights; it must have been against the acts of others. **Bank of Columbia v. Okely, 17 US 235 - Supreme Court 1819**

It is the duty of the state to protect the lives and persons of its citizens and others temporarily resident therein. **State v. Warrick, 125 NW 2d 545 - Neb: Supreme Court 1964 [Not controlling in Maine]**

It is the duty of the State to protect its own citizens, within its own borders. This is the natural compensation for allegiance. This high duty extends to all the pecuniary rights of the citizens, as well as to the rights of security of person.—Foster's Cr. Cas. p. 188; Story, J., in U. S. v. Rice, 4 Wheat. 246, 254, (4 L.Ed. 562). No obligation of comity is paramount to this duty. Without a constant and effective exertion of it, citizenship would become a farce.—Reid v. U. S., 3 Quart. Law Journ. p. 122; S.C. 4 Div.C.C. 21; U. S. v. More, 3 Cranch 160, (2 L.Ed. 397), note. **Billingsley v. Billingsley, 231 So. 2d 111 - Ala: Supreme Court 1970**

"The **police power** is a governmental function, an inherent attribute of sovereignty, and the greatest and most powerful attribute of government. It was born with civilized government, and was possessed by every state before the union was formed. Although the basis of the police power

lies in the constitution which regards the public welfare, safety, and health of the citizens of the state, and although it may be given to the people of the state by the constitution, the power exists without any reservation in the constitution, being **founded on the duty of the state to protect its citizens** and provide for the safety and good order of society. **PARISH COUNCIL, ETC. v. LOUISIANA HIGHWAY, ETC., 131 So. 2d 272 - La: Court of Appeals, 1st Circuit 1961**

The state has no more important interest than the maintenance of law and order. Sterling et al. v. Constantin et al., 287 U.S. 378, 399, 53 S.Ct. 190, 77 L.Ed. 375. It is as much the duty of the state to protect property from destruction by mob violence and to preserve the liberty of the citizen to use his property lawfully as it is to protect the same property from theft or arson. **No official intrusted with the enforcement of the law can select the laws which he will enforce or the citizens that he will protect. He has sworn to enforce all laws and to protect all citizens,** and there is no escape for him "from the paramount authority of the Federal Constitution." Sterling et al. v. Constantin et al., supra, 287 U.S. 378, at page 398, 53 S.Ct. 190, 195, 77 L.Ed. 375. **Strutwear Knitting Co. v. Olson, 13 F. Supp. 384 - Dist. Court, Minnesota 1936**

The right to so seize is based upon the right and duty of the state **to protect** and guard, **as far as possible, the lives and health** of its inhabitants **Camuglia v. The City of Albuquerque, 448 F. 3d 1214 - Court of Appeals, 10th Circuit 2006**

The right to so seize is based upon the right and duty of the State to protect and guard, as far as possible, the lives and health of its inhabitants **North American Cold Storage Co. v. Chicago, 211 US 306 - Supreme Court 1908**

How can the executive branch part called police officers refuse to protect any one of the inhabitants when they are under criminal attack when the duty of the State is to protect and guard, as far as possible, the lives and health of its inhabitants?

The answer is police operate under the inapplicable Due Process clause when the police need to operate under and apply governments inherent police power that demands protection of each citizen as a reward and a compensation for the citizens allegiance. Once protection was denied from the state allegiance was removed and the people were emancipated as occurred in the 1770's.

I begin the search for which part of a state is responsible to ensure the security of person of each citizen with an examination of each one the different governmental branches and their actual ability to protect the security of person for each and every citizen.

The legislative and judicial branches are only expected and designed to make decisions and write those decisions down. Neither branch is trained or equipped to protect the security of person of each one of the people. We thus dispose of the idea that these 2 branches have that legal duty. Each has immunity for their actions and that immunity removes the concept of those branches immune employees from having any legal duty to uphold.

The military is not allowed or expected to protect the civilian population by being troops in our midst per the Declaration of Independence and the Posse Comitatus Act. Therefore the military is not required to protect the governed from harm. Even in combat the military has no legal duty to protect all civilians from being injured or killed by enemy troops.

Only the executive branch remains. The governor can not protect everyone in the state. The governor has immunity which implicitly removes the governors legal duty to protect anyone. The executive branch agencies are limited to making and enforcing regulations. They are not equipped for this task and have no legal liability for not protecting every citizen. Therefore these agencies and the governor are not the appropriate part of the state to perform this duty.

Only law enforcement remains as the part of the state that has the physical presence, training, legal authority, and equipment that is necessary to protect and ensure the security of person for each citizen. As only law enforcement has the manpower, equipment, training, and legal authority to attack those who attack citizens law enforcement by default is the only part of government with the legal duty to protect each one of the states people, their citizens and others who are present.

Therefore law enforcement has the legal duty to protect citizens from bodily and financial injury every time they are reasonably able to intervene in time to stop an attack. It does not matter who is attacking a citizen. Police officers have the duty to assess a situation, protect the citizen, and remove anyone who is injuring a citizen or that citizens pecuniary rights even if the citizens attacker or pecuniary rights violator is the police officer assessing the scene! This duty applies even when law enforcement claims to justify theft by claiming civil asset forfeiture to justify stealing a citizens property without making any legal charges against the citizen and having evidence to prove the property was used in a crime.

If a police officer unjustly attacks a citizen all officers who are there at that time or who arrive at a later time upon seeing an officer attacking a citizen have the legal duty to assess, evaluate, and pull the abusive officer off or to engage in deadly force when it becomes necessary to protect that citizen from an attacker. The police officer who unjustly attacks a citizen has a legal duty to stop using any level of appropriate force up to and including deadly force against himself, and then to arrest himself based on the officers actions that improperly removed that citizens security of person. If necessary for that police officer to remove the threat he himself is creating the attacking officer has the legal duty to shoot himself to protect that citizen from himself as all other officers do who see that officer attack a citizen in violation of that citizens right of security of person.

Police power is presumably found within Article I, Section 8, Clause 18 and the 11th amendment. Police power is an inherent part of sovereignty. As the 11th amendment somehow includes sovereignty it also includes police power as a part of that sovereignty. A sovereign without police power is only a lying blowhard not a true sovereign. Excluding police power from the source of U.S.A. sovereignty would mean the U.S.A. is not truly a sovereign nation.

The right of the people to have the state ensure their security of person is found in the 9th, 10th, and 11th amendments along with the penumbra of rights recognized by the U.S. Supreme Court in multiple cases. Recognizing and enforcing the Constitutional duty of the state through its executive branch will protect and ensure the states highest duty, to ensure the safety of the people by those best suited for the task, law enforcement officers.

Law enforcement officers being bound by this duty means a constant and effective exertion of the right of security of person for each citizen by the law enforcement officials of the state will prevent citizenship from becoming, or perhaps remaining, a farce. Once citizen protection is required from law enforcement the citizens duty of allegiance that was removed by the Courts declarations in *DeShaney v. Winnebago* and *Castle Rock v. Gonzales* will be reinstated. These two cases were decided on the due process clause instead of looking at police power.

The 9th and 10th amendments included within them the duty of each states law enforcement officers to protect the people. This was affirmed when the Supreme Court declared *The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these "unalienable rights with which they were endowed by their Creator."* Only law enforcement is capable of performing this task. By default or design the duty to protect each citizen falls on law enforcement officers. There is no other part of the government that can perform this duty.

If the State does not require its law enforcement officers to protect the people from harm and no other state employees have that absolute duty to protect the people from harm with the correlating liability for failure to perform that task then the state through the Courts has declared the people out of its protection and emancipated them just like the King, legislature, or judges removed England's protection from the emancipated colonists who received their emancipation by the denial of protection from government in the 1700's as declared in the Declaration of Independence.

The government though Courts and legislatures has declared us out of its protection by declaring multiple state employees to be immune for their crimes and by denying the protection of the people by police or others. By this removal of government protection of our security of person or pecuniary rights we the people have been emancipated by that government who refused to protect the people from the government as previously declared in the Declaration of independence.

Prior tempore, potior jure. Earlier in time, stronger in right.

He has abdicated Government here, by declaring us out of his Protection and waging War against us. **Declaration of Independence**

Unless the state has a legal duty to protect the citizens the state can have no authority over the citizens. Therefore either the police have a legal duty to protect the citizens or the state has no authority over its citizens as the states protection has been removed.

Daniel L. Chao
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